

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: Methyl Tertiary Butyl Ether (“MTBE”) : X
Products Liability Litigation : Master File No. 1:00-1898
: MDL No. 1358 (SAS)
: M21-88

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This Document Relates To: The Honorable Shira A. Scheindlin
Crescenta Valley Water District v. Exxon Mobil :
Corporation, et al., Case No. 07 Civ. 9453 :
(SAS) :

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**BP DEFENDANTS’ LOCAL CIVIL RULE 56.1 STATEMENT OF MATERIAL FACTS
NOT IN DISPUTE IN SUPPORT OF MOTION FOR PARTIAL SUMMARY
JUDGMENT AS TO CERTAIN CVWD WELLS**

1. On July 2, 2010, Plaintiff’s expert Dr. Stephen Wheatcraft served his expert report in this case. That report contained a separate computer model run for the concentrations of MTBE allegedly contributed to all Crescenta Valley Water District (“CVWD”) wells by the ARCO gasoline service station formerly operated at 6454 Foothill Blvd., La Crescenta, California (“former ARCO station”). (Declaration of Lawrence A. Cox In Support Of BP Defendants’ Motion for Partial Summary Judgment As To Certain CVWD Wells (“Cox Decl.”), ¶ 4, Ex. 4.)

2. Dr. Wheatcraft’s model attributes contributions of zero (0) ppb by the former ARCO station to CVWD Wells 1, 6, 7, 8, 9, 10, 11, 12, 14 and 15 during any and all periods when those wells have actually reported MTBE at concentrations above either California’s 5 ppb taste and odor Maximum Contaminant Level (“MCL”), or the current California Detection Limit for Purposes of Reporting (DLR) of 0.5 ppb. (Cox Decl. Ex. 4; Declaration of William T.

Costley III In Support Of BP Defendants' Motion for Partial Summary Judgment As To Certain CVWD Wells ("Costley Decl.") ¶3, Ex. 1.)

3. Dr. Wheatcraft's model also attributed a "Peak Value" of zero (0) ppb as the former ARCO station's past and future "contributions" to any MTBE reported or to be reported in CVWD Well 8. (Cox Decl. Ex. 4, p. 169; Costley Decl. ¶ 4.)

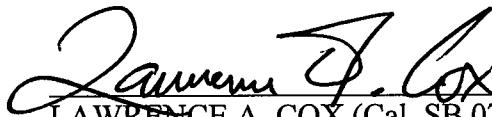
4. On March 10, 2011, the Court held a Pre-Motion hearing in which CVWD's counsel, Mr. Duane Miller, repeatedly stated on the record that CVWD did not have claims against BP for wells where Dr. Wheatcraft's model concluded there had been past MTBE contribution of zero ppb from the former ARCO station. (Cox Decl. Ex. 6, March 10, 2011 Tr. 18:13-17, 19:9-12, 30:21-31:2.)

5. On March 15, 2011, following the hearing and Mr. Miller's admissions, counsel for BP requested that CVWD's counsel stipulate to entry of partial summary judgment in favor of BP as to CVWD Wells 1, 6, 7, 8, 9, 10, 11, 12, 14 and 15. (Cox Decl. ¶ 7, Ex. 7.) No response to this request was received.

6. On March 17, counsel for BP wrote to counsel for CVWD, again requesting that CVWD agree to the proposed stipulation. This time, counsel for CVWD, Mr. Michael Axline, responded with a telephone call, refusing to agree to the stipulation and requesting that BP delay filing its Motion until a further model run was generated by Dr. Wheatcraft to address a possible error related to continuing to add MTBE mass to the model for the period from and after July 2010. (Cox Decl. ¶ 8, Ex. 8.) Counsel for BP declined this request, as any possible changes to Dr. Wheatcraft's modeling results would necessarily not pertain to earlier time periods, during 2006-2008, when CVWD reported MTBE concentrations at or above 5 ppb and 0.5 ppb. (*Id.*; Costley Decl. Ex. 1.)

Date: March 31, 2011

Respectfully submitted,



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CERTIFICATE OF SERVICE

William Costley, pursuant to 28 USC 1746, hereby declares under penalty of perjury, that on 31st day of March, 2011, I caused to be served by electronic means upon all parties to the above-referenced matter via LexisNexis File & Serve a true and correct copy of the following document:

BP DEFENDANTS' LOCAL CIVIL RULE 56.1 STATEMENT OF MATERIAL FACTS NOT IN DISPUTE IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO CERTAIN CVWD WELLS



William Costley